



Missouri Department of Natural Resources

Joint Informational Meeting with the

Missouri Clean Water Commission

and the

Missouri Hazardous Waste Management Commission

Meeting Minutes

December 11, 2003

MISSOURI CLEAN WATER COMMISSION (MCWC)
AND
HAZARDOUS WASTE MANAGEMENT COMMISSION (HWMC)
JOINT MEETING

December 11, 2003

Bennett Springs/Roaring River Conference Room
1738 E. Elm Street
Jefferson City, MO 65102

COMMISSIONERS

Thomas Herrmann, Chairman, MCWC
Ben Kessler, Chairman, HWMC
William Easley Jr., MCWC
Paul Hauser, MCWC
Tim Warren, HWMC
Rusty Brown, HWMC
Norella Huggins, HWMC
Robert Saunders, HWMC
Pat Gleason, HWMC

INTRODUCTION

Jim Hull, Director of the Water Pollution Control Program (WPCP) and Ed Galbraith, Director of the Hazardous Waste Program (HWP) introduced Scott B. Totten, Director of the Water and Soil Protection Division (WSPD) and Jim Werner, Director of the Air and Land Protection Division (ALPD). Mr. Galbraith told the Commissions that the purpose of this joint commission meeting was to provide an opportunity not only to show integration, but to also improve integration between the two programs.

Chairman Thomas Herrmann, introduced the WPCP Commissioners who were present, noting that Commissioners Kristin Perry, Cosette Kelly and Davis Minton were at the St. John's appeal hearing and were unable to attend. Chairman Ben Kessler, introduced the HWMC Commissioners that were present, noting that Commissioner Susan Williamson was not present.

RISK BASE CORRECTIVE ACTION (RBCA)

Scott B. Totten, gave a brief history and outlined the responsibility of the MCWC in relationship to the RBCA. He explained that this involved:

- the cleanup of groundwater,
- a look at future use of the properties being cleaned up,
- determining their relative risk to public health and the environment
- development of a regulation that allows for contamination to remain in place with controls to protect against future risks.

Mr. Totten informed the commissions of the cooperative involvement between the Missouri Department of Natural Resources and numerous stakeholders in the development of the regulation and an evaluation cleanup process and procedure. He explained that the Hazardous

Waste Program's Voluntary Cleanup Program, Resource Conservation Recovery Act (RCRA), Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and Underground Storage Tanks are the primary cleanup programs by which these cleanups will occur.

Jim Werner presented the status of the RBCA, giving a brief legislative history explaining what is needed based on the rules that have been passed. Mr. Werner pointed out that the question RBCA attempts to answer is not how much contamination can be removed but rather how much contamination can be left safely in place. He explained the basics of the RBCA in relationship to that question, also pointing out that the cleanup standards are based on current and intended future use of the property. Mr. Werner informed the Commissions that the WPCP and the HWP are committed to and are taking the necessary steps toward implementing RBCA. He said ALPD legal review has determined that the existing rules within the primary cleanup programs allow for RBCA and can be implemented through guidance and training of staff, with the exception of additional rules needed regarding underground storage tanks. Mr. Werner told the Commissions that work has already begun to address the need of these additional rules and that this may include a general overarching rule to be brought before the Commissions in the future.

STAKEHOLDERS

Mr. Werner had been asked by the Stakeholders to express their appreciation of the Commissions' trust, direction and patience in allowing them the time to work out the complex issues regarding regulations. Mr. Werner asked the stakeholders who were present at the meeting to standup as he introduced them.

Carol Eighmey, Executive Director of the Petroleum Storage Insurance Fund (PSTIF), presented a framework of why the PSTIF is interested in the RBCA. Ms. Eighmey stated that there have been about 9,500 tank site properties where tanks have been removed and received a No Further Action letter in the last 15 years and estimated a projection of about 1,500 properties in the next seven years that will require cleanup. She explained that PSTIF deals with high volume, small property, and very rapid cleanups, which usually involve relatively low risk contaminants. Ms. Eighmey informed the Commission that PSTIF's motivation to implement RBCA is to spend resources on the most high priority sites. She explained there are sites where there is shallow water or soil contamination with petroleum present that could be closed using more scientific measures of analysis under the RBCA. Thus, creating more money to be spent on more high priority sites. Ms. Eighmey encouraged training of staff regarding the RBCA and asked that the PSTIF only have to deal with one set of rules from one Commission.

Mr. Werner reminded the Commissions that while the law requires MCWC to issue the rules involving PSTIF, these cleanups often involve hazardous waste duties. He said there is proposed legislation to shift responsibility of the tanks programs from the MCWC to the HWMC.

Carla Kliene, Sierra Club, gave a brief history of the Sierra Club's involvement with the stakeholder process, pointing out that the Sierra Club relies on volunteers to represent them in these processes. She suggested videoconferences as an alternative, stating that it would help the volunteers to be involved at a closer location, who otherwise would have to take time off and spend their own money to attend meetings. Ms. Kliene told the Commission that there have been meetings where votes were taken and the environmental groups had been at a disadvantage because they were outnumbered in representation at these meetings.

Kevin Perry, REG Form, said implementing RBCA is a way of addressing waste cleanups at a time where there is less money and fewer staff. He pointed out the necessity of recognizing and cleaning up priority sites. Mr. Perry said there is a need for a resolution on institutional controls

and a plan for activity use limitations. He said a uniform environmental covenant needs to be adopted. Mr. Perry stressed the need for a rule and a regulation that is reliable and predictable. He asked the Commissions to promulgate the RBCA regulations when they are proposed.

Bob Veenstra, St. Louis Regional Commerce and Growth Association (RCGA), gave a brief history of RCGA's involvement with RBCA. Mr. Veenstra praised the positive affects of the consensus building approach involving the regulators and the interested citizen groups and the team building that including subcommittees consisting of regulators, clients and engineers. He said another key benefit of the stakeholder process is the leveraging of manpower, resources and expertise. Mr. Veenstra praised Atul Salhorthra, RAM Group, nationally known expert in RBCA issues, who's facilitating expertise helped keep the stakeholders on task. He pointed out the cooperation and unity between the WSPD and the ALPD in embracing this as a shared risk base remediation rule. Mr. Veenstra pointed out the activity and use limitation and the guidance document as being critical to the completion of the implementation of the RBCA. He suggested that a deadline be set for completion of the guidance document.

Jim Werner pointed out two Commission action items: the rulemaking process and the decision of the need technically of storage tank rule or an umbrella rule. Mr. Werner asked the Commissions how they wanted to address the action items, whether together or separately, suggesting the possibility of the programs composing an options paper that the Commissioners could jointly consider. Mr. Werner also pointed out two program action items: the guidance document and the activities use limitations, pointing out the importance of the activities use limitations. He told the Commission that the programs would stick to the path but reminded them of the affect of budget cuts and limitation of funds.

DRAFT MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE WPCP AND THE HWP

Ed Galbraith and Jim Hull explained that the MOU between the WPCP and the HWP establishes the framework for coordinating activities between the two programs at facilities of mutual interest. The purpose is to insure only one program making decisions at a time.

Chairman Herrmann asked the program directors if the intended end result of this project is still to come to the Commissions with a baseline rule that could be used to remediate a site, or for some other use, without having to go through total cleanup. Mr. Hull confirmed that this was the intention.

Rob Morrison, HWP Permits Section Chief and Phil Schroeder, WPCP Permits Section Chief, explained the purpose and process of the MOU referring Commissions to a handout they were given. (*See handout attachment #1*)

Commissioner Huggins spoke in favor of the adoption of a RBCA rule by each of the Commissions saying that it would enhance the coordination under the MOU. Commissioner Huggins suggested that Jim Werner and Scott B. Totten be tasked with describing the adoption procedure to the Commissions.

A 10-minute break was taken at this time.

LAND TREATMENT OF PETROLEUM CONTAMINATED SOIL (LANDFARMS)

Fred Hutson, HWP Tanks Section and Tony Dohman, WPCP Permits Section explained the purpose, function, procedures and benefits of Landfarming, referring to handouts given to the Commissions. Questions were raised regarding negative repercussions related to landfarming, and public notification of permitted landfarms. Mr. Dohman informed the Commissions that the public often does not want to live close to landfarms and said it is a general permit that goes out to public notice when drafted, but not at the time the permit is applied for. Mr. Dohman said efforts were being made to accommodate the public who do not want landfarms near their homes with set back distances from property lines and that the draft of the new permit addresses the public notification issue. Mr. Dohman addressed the issues of cleanfill and the marketing and usage of remediated soil, stating that as far as he knew, it could be used for a cleanfill. Ed Galbraith explained the existing tank action level guidelines in current cleanup procedures regarding cleanfill requirements. Jim Hull further explained to the Commissions the limited landfill space, the necessity of treating soil and daily cover usage. (See handout attachments #2, #3)

Several citizens offered public comments regarding concerns of landfarm locations. The concerns expressed were:

- The lack of investigation and regulation by the Department of Natural Resources (department) regarding commercial landfarms
- The feeling of having been lied to by the department and frustration with a “grandfather’s clause” on the revised permit that excludes anything built before May 2003.
- Their lack of representation on these landfarm issues
- Landfarm owner/operators with financial incentives and integrity issues taking advantage of shortcuts and inappropriate handling of landfarms
- Lack of communication within the department and with communities
- Proximity of the landfarms and related safety risks
- Lack of departmental oversight of landfarm soil testing

Mr. Hull reminded the Commissions that there may be changes regarding landfarm permits in the future. The landfarms being referred to by the citizens are covered by general permits that are not site specific and do not require rigorous review. Chairman Herrmann reminded those present of Commission meetings that have been held on-site for the purpose of keeping the Commissioners informed, but how budget cuts have limited such on-site meetings in the past year.

BUDGET AND LEGISLATION

Scott B. Totten and Jim Werner gave a brief summary on the affects of the lack of general revenue in the programs, sighting administrative cuts and the elimination of some positions.

Mr. Totten explained the authorization of statutory provisions of fee funds, earmarking them for certain activities that make them unavailable to be used elsewhere. Mr. Totten informed the Commissions of the remaining \$8,000,000 in general revenue that is focused in the Geology Division, the Outreach Division and the Regional Offices. He explained the necessity to pay

employees in these areas with the general revenue instead of out of the 45 different funds of grants and fees, stressing the fact that the \$8,000,000 affects “real people”.

Mr. Werner explained to the Commissions how methamphetamine lab cleanups are funded and cleaned up. He told the Commissions that federal funds used in these cleanups have run out, stressing the devastating affect if the remaining general revenue used on these cleanups is gone. Mr. Werner also spoke about the Waste Tire Fee, reminding the Commissions of the loss of the fee during legislation last year and the negative affects that loss will have, referring to it as a crisis.

Ed Galbraith gave a power point presentation explaining the Hazardous Waste Fee Bill, how it is a main support in the programs and the affect of its absence, were it not passed this year. He stressed that it is no longer a matter of “tightening belts” but whether we will have a program or not. *(See handout attachments #4, #5, #6 #7)*

Mr. Werner gave a summary of the Uniform Environmental Covenants Act, informing the Commissions that the programs proposed a piece of legislation that will help streamline the process, and help provide the predictability, uniformity, and transparency that has been requested. *(See handout attachments #8, #9, #10,)*

Ed Galbraith presented the Risk-Based Remediation Policy Statement and Expectations document signed by Jim Werner and Scott B. Totten, adopting the commitment to implement the RBCA process as policy. Mr. Galbraith also spoke to the Commissions regarding Senate Bill 901, moving jurisdiction for underground storage tanks issues from the MCWC to the HWMC. *(See handout attachments #11, #12)*

The meeting was adjourned.

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